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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 399

JAMES FIELDS, et al., PETITIONERS,

versus

STATE OF SOUTH CAROLINA, RESPONDENT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether there was sufficient evidence before the trial court to sustain conviction of petitioners of the common law crime of breach of the peace, even though the acts of which the charges arose were done in the course of the exercise of petitioners' constitutional right to assemble and petition for redress of grievances.

STATEMENT

Petitioners were part of a group of some 350 Negro students who were arrested in the City of Orangeburg, South Carolina on March 15, 1960 and charged with the crime of breach of the peace. There were nearly one thousand assembled in three groups, but all were not arrested.

The various groups were marching toward the seat of city government in Orangeburg from two colleges located on the outskirts of the city. City and State police were present because there had been previous demonstrations just a week or two earlier. On March 1, 1960 there had been a parade of 600 to 700 Negro students through the city.

As a result of these demonstrations, there was high tension and feeling among both White and Negro races in the community. There had been arrests arising out of clashes between Negroes and Whites. In their efforts to maintain order, the city officials had requested the assistance of State law enforcement officers, the Mayor of the city publicly proclaimed that no further marches or parades would be tolerated within the city without a permit, and a notice was read at the assembly hour of the South Carolina State College on March 2, 1962 informing the students that, before further parades or marches downtown, the city authorities would require that a permit be obtained.

Without any notice to the city, and under the circumstances set forth, three groups of students, totaling approximately one thousand, left their college campuses about noon on March 15, 1960 and proceeded to march, two abreast along the sidewalks toward the main business section of Orangeburg, each group taking a different route. The purpose of the procession, as testified to by some defendants, was to petition for redress of grievances in allegedly being denied the right of peaceful assembly and freedom of speech. However, no audience had been sought, or apparently intended, with any official of the city, county, or State government.

Petitioners were arrested when their activities blocked streets and sidewalks, affected adversely the traffic on adjacent streets, attracted crowds, and created a potentially dangerous and explosive situation.

ARGUMENT

There is no conflict in the decision of the Supreme Court of South Carolina with any decision of this court. In discussing the conflict between the assertion of constitutional rights by the individual and the power of the State to punish for breach of the peace, this court stated in *Cantwell v. Connecticut*, 310 U. S. 296:

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but *acts and words likely to produce violence in others* (Emphasis added). No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious."

It is unquestioned that petitioners have the constitutional right to freedom of speech, assembly, and to petition for redress of grievances. They do not, however, have the right to assert such constitutional rights at any and all times, and in the face of the State's duty to preserve the public peace and assure the use of the streets to the community. The constitutional principles invoked by petitioners do not prohibit State action when a clear and present danger of riot, disorder, interference with traffic or other immediate threat to public peace or order appears. Constitutional rights can only exist in an orderly society.

The opinion of the Supreme Court of South Carolina is also in accord with the principles of this court set forth in *Feiner v. New York*, 340 U. S. 315.

CONCLUSION

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

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